



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

**LAND USE LICENSE ("License")
FACE SHEET**

License No. 60-NW1308 DNR Northwest Region Snohomish County

License authorization period: FROM December 4, 2013 THROUGH December 4, 2014.

Specify other times as applicable: None

License Area (legal description/other identifying descriptors): Portions of the SE¼ SE¼ of
Section 5 of Township 28 North, Range 8 East as shown in Exhibit A.

Name of Licensee: City of Everett

Business: City of Everett

Address: 3200 Cedar Street
Everett, WA 98201

Phone: 425-257-8800 FAX:

Hereafter referred to as "Licensee," is hereby authorized by the Department of Natural
Resources, hereafter referred to as "State," during the specified time period to use land in the
above described location; and/or the facilities (improvements) listed below:

Permitted Use(s):

1. Demolition of house residing on State land.

Performance Security: Security Required _____ Not Required X Amount: _____

Liability Insurance Required: _____

(see Addendum A, Insurance Requirements, for specifics)

ISSUANCE of this License is subject to payment to the State of the sum of \$ 0 (plus leasehold excise tax if applicable) and to the terms and conditions on appended pages (listed below and by this reference made a part of this License):

Addendum A - Terms and Conditions of Land Use License

Exhibit A - Map of authorized access routes for Licensees

Exhibit B - HCP Requirements (use only if License is in the HCP Permit Areas)

The undersigned hereby accepts this License subject to the terms and conditions expressed or implied herein.

Licensee:

Ray Stephenson 9-9-2014
Signature Date

UBI No. (if applicable) _____

Authorizing Official:

Jean Fike 9-16-14
Northwest Region Manager Date



Approved for HCP Clause, February 8, 1999,
by James Schwartz
Assistant Attorney General
State of Washington

**Note: 1) License must be available on site for inspection during licensed activity.
2) This license does not reserve campground or trails.**

ATTEST:

Charmelle
City Clerk

APPROVED AS TO FORM

James D. Iles
JAMES D. ILES, City Attorney

ADDENDUM "A" - TERMS AND CONDITIONS FOR LAND USE LICENSE

TERMS:

1. Purpose. By issuance of this License, State is conferring the privilege of use of the land and/or improvements herein described, and expressly retains exclusive possession of same.
2. License Authorization Period. This License is limited to the license authorization period(s) specified on *face sheet* and is not subject to renewal.
3. Revocation. This License may be revoked at will, including under the following circumstances:
 - a. immediately upon material breach of any of the conditions herein or, for reasonable cause, by the State's authorized representative without compensation to the Licensee or liability to State;
 - b. upon sixty (60) days' written notice in the event the State includes the License area in a plan for higher and better use, land exchange or sale;
 - c. up to 24 hours in advance of the licensed activity due to adverse and extraordinary weather conditions (e.g., high fire danger) which could adversely affect public resources. Any fees paid will be kept on account to be applied if and when the activity is rescheduled.
4. Non-Transferrable. This License is personal to the Licensee and may not be transferred.
5. Encumbrances. This License is subject to any rights and valid claims previously conveyed by State, and to any rights and valid claims pending on or encumbering License area.
6. Compliance. State retains possession of and the right to access License area at any and all times to ensure compliance or carry out any management activities.
7. Access. Provisions for the use of rights of way across State land, including the License area and adjacent land are as follows:
 - a. A nonexclusive right to use an existing road over and across the location shown on the map(s) attached as Exhibit A.

8. Condition of Premises. Licensee has inspected the License area and accepts it in its present condition. The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the License area is suitable for intended use.
9. Notice to Licensee: This License does not interfere with State's management activities and possible sale or exchange of the land.

CONDITIONS:

1. Compliance with Laws. Licensee shall comply with all applicable laws, including all Department of Natural Resources regulations, county and municipal laws, ordinances, or regulations in effect.
2. Required Permits/Licenses. Licensee shall obtain and be in possession of all permits and licenses required for the permitted use, and shall provide proof of such permits/licenses upon request by State's representative.
3. Responsibility. Licensee assumes responsibility for all activities conducted, including but not limited to supervision and control to prevent injury or damage; maintenance of the premises during the use; clean-up of litter and debris; and provision of surveillance and security to preserve order.
4. Insurance. The State of Washington, including all its agencies and departments, is self-insured for all exposures to tort liability, general liability, property damage liability and vehicle liability, as provided in statute, but only as respects the negligence of State.

The Licensee also maintains its own liability self-insurance program, which includes a \$1.125 million self-insured retention, plus \$10 million and \$20 million excess layers. Licensee shall be required to purchase commercial insurance pursuant to this Agreement when its self-insurance program's funding mechanism or its financial conditions become inadequate as discussed below. The Licensee shall provide a letter from Licensee's Risk Manager or City Attorney certifying that the Licensee's self-insurance program remains in place. So long as the self-insurance program remains in place and fully funded, Licensee is not required to maintain commercial insurance under this Agreement.

The letter shall demonstrate that Licensee's self-insurance meets all of the insurance coverage required by this Agreement to the satisfaction of State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of Licensee becomes inadequate during the term of the Agreement, State may require Licensee to purchase the commercial insurance required below to comply with this Agreement.

Before using any of said rights granted herein and at its own expense, the Licensee shall obtain and keep in force during the term of this License and require its contractors and sub-contractors, to obtain while operating on the Premises, the following liability insurance policies, insuring Licensee against liability arising out of its operations, including use of vehicles. Additionally, insurance must cover permittees for claims arising out of or resulting from the event or activity. Failure to buy and maintain the required insurance shall result in the termination of the License. The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

- (a) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- (b) Business Auto Policy (BAP) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 with such insurance covering liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later versions of CA 00 01. Licensee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- (c) Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (d) Licensee shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all volunteers, employees of Licensee and employees of any contractors or sub-contractors. Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employer's liability, commercial general liability or commercial umbrella liability insurance.

All insurance must be purchased on an occurrence basis and must be issued by companies admitted to do business within the State of Washington and have a rating of A- or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved, at the State's sole discretion, in advance by the Risk Manager for the Department of Natural Resources.

If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as additional insured by the Licensee on all general liability, excess, and umbrella insurance policies required by this Agreement. This requirement does not extend to Licensee's self-insurance program.

Before using any said rights granted herein, Licensee shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above. Certificate(s) must reference the State's Land Use License number. State shall furnish, upon request, a certificate of insurance showing compliance with the insurance requirements specified above.

State and Licensee shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW).

Licensee shall require its Permittees to provide certificates of insurance to Licensee and require Permittee's sub-contractors to be insured under the Permittee's policy or have in its possession separate certificates of insurance and endorsements for each.

Failure of Permittees to comply with Exchanger's insurance requirements does not limit Licensee's liability or responsibility.

State shall require its Permittees to provide certificates of insurance to State and shall require Permittee's subcontractors to be insured under the Permittee's policy or have in its possession separate certificates of insurance and endorsements for each. Failure of Permittees to comply with State's insurance requirements does not limit State's liability or responsibility.

State and Licensee shall furnish, upon request, certificates of insurance and endorsements for any or all Permittees.

All insurance provided by the Licensee in compliance with this agreement shall be primary. Licensee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Agreement.

By requiring insurance herein, State and Licensee do not represent that coverage and limits will be adequate to protect State or Licensee, and such coverage and limits shall not limit State or Licensee's liability under the indemnities and reimbursements granted to each other under this Agreement.

5. Indemnification. Licensee shall indemnify, defend (with counsel acceptable to State) and hold harmless State, its employees, officers and agents from any and all liability, damages (including, but not limited to, personal injury and damages to land and other natural resources), expenses, causes of action, suits, claims, costs, fees (including, but not limited to, attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use or occupation of the Premises by Licensee, its Permittees, contractors, concessionaires, agents, employees, guests, invitees, customers or affiliates, except as may arise solely out of the willful act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Licensee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence.
6. Protection of Natural Resources and Improvements. Licensee shall take all reasonable precautions to prevent or minimize damage to natural resources (e.g., vegetation, wildlife, soil, water) and improvements (crops, buildings, roads, etc.) within the License area. Licensee shall cut no State timber, remove no State-owned valuable material (as defined in RCW 79.02.010(14) plus coal, minerals, oil or gas), disturb or remove any cultural, historical or paleontological (fossils) resources, without written prior consent of the State. Upon revocation or expiration of this License, Licensee shall reclaim any disturbed areas to the specifications of the State within a reasonable amount of time as agreed to by State's authorized representative. Damage to timber, crops and improvements not identified and paid for under the terms and conditions of this License shall be appraised by the State. The Licensee shall be liable for said damages at the appraised rate.
7. Cleanup. All garbage shall be packed out, or disposed of as required by the State's authorized representative, within the license authorization period of this License.
8. Improvements/Personal License Area. No building or other structures will be erected under this License within the License area. Any unauthorized improvements shall either be removed immediately by the Licensee, removed by State at the cost of the Licensee, or become the License Area of State, at State's option. All personal Property must be removed from the premises upon revocation or expiration of this License. Any property remaining after 24 hours will become the property of the State, unless a longer time allowance is specifically authorized by the State under the "Additional Terms and Conditions" section below.
9. Noxious Weeds. Licensee shall take all reasonable precautions, which may be directed by State's representative, to control the spread of noxious weeds as a result of their activity. Licensee shall be responsible for, or shall immediately reimburse State, for any weed control cost incurred as a result of Licensee's failure to comply with precautions directed by State. All methods of chemical weed control shall be approved in writing by State prior to beginning such activities.

10. Discrimination. Licensee shall not conduct or suffer any business upon the License area which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.
11. Environmental Liability/Risk Allocation
- a. Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. '9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*
- b. Use of Hazardous Substances. Licensee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under or above the License area, except in accordance with all applicable laws. Licensee agrees to use hazardous substances only to the extent necessary to the permitted use under this License.
- c. Deleterious Material. Licensee shall not make, or suffer to be made, any filling in of the License area or any deposit or rock earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the premises, except as approved in writing by the State. If the Licensee fails to remove all non-approved fill material, refuse, garbage, wastes or any other of the above materials from the License area, the Licensee agrees that the State may, but is not obligated to, remove such materials and charge the Licensee for the cost of removal and disposal.
- d. Notification and Reporting. Licensee shall immediately notify State if Licensee becomes aware of any of the following:
- (1) a release or threatened release of Hazardous Substances in, on, under or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area;
 - (2) any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area;
 - (3) any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area;

e. Indemnification and Burden of Proof. Licensee shall fully indemnify, defend (with counsel acceptable to State), and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of or are in any way related to:

- (1) the use, storage, generation, processing, transportation, handling, release or disposal of any Hazardous Substance by Licensee, its contractors, concessionaires, agents, employees, guests, invitees, or affiliates in, on, under, or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area, during the license authorization period of the License or during any time when Licensee occupies or occupied the License area or any such other property;
- (2) the release or threatened release of any Hazardous Substance in, on, under, or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area, which release or threatened release occurs or occurred during the license authorization period of the License or during any time when Licensee occupies or occupied the License area and as a result of:
 - a. Any act or omission of Licensee, its contractors, concessionaires, agents, employees, guests, invitees, or affiliates; or,
 - b. Any act or omission of a third party unless Licensee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

12. Streamcourse Protection. Equipment shall be set back from the stream bank so demolition activities will not damage or encroach on the flowing stream. No timber shall be felled across or into and no yarding shall be permitted in or through such streamcourses, lakes and ponds as designated by the State unless permission to do so is granted in writing by the State's authorized representative.
13. Erosion and Damage to Soil. During operations under this License, including the construction of roads and landings, the Licensee shall take such precautions as necessary to minimize insofar as possible soil erosion and damage to the soil. Equipment will not be operated when ground conditions are such that excessive damage will result.

14. Preservation of Surveys. All legal land subdivisions survey corners and witness objects are to be preserved. If such are destroyed or disturbed, the Licensee shall re-establish them by a registered professional engineer or licensed land surveyor in accordance with U.S. General Land Office standards at its own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in process of construction must be adequately referenced and/or replaced in accordance with all applicable laws of the State of Washington in force at the time of construction, reconstruction, or development of the right of way including but not limited to RCW 58.24, and all Department of Natural Resources rules and regulations pertaining to preservation of such corners and/or witness objects. Such references must be approved by the State prior to removal of said corners and/or witness objects.
15. Road Maintenance. During periods when a road, or portion thereof, is being used by the Licensee, that portion of the road so used shall be maintained by said party at its own expense and, at the termination of each period of such use, shall be left in a condition equal to or better than the condition of the road immediately prior to said use.
16. Obstruction. To the extent practicable Licensee shall not obstruct said roads or take any action to restrict the flow of traffic on said roads without the State's written permission.
17. Debris Disposal. Licensee shall dispose of forest debris as defined by law, concurrent with cutting and land clearing, by piling and burning on the right of way (or site). Alternate methods of disposal may be permitted provided a written supplement to this document shall first be obtained from the State's authorized representative. The supplement shall include but not be limited to the following minimum requirements:
 - a. Dates and places of disposal;
 - b. Methods and means of disposal;
 - c. A map showing the areas affected by the supplement.
18. Plan of Operation. Thirty (30) days prior to commencement of the activity licensed herein, the Licensee shall submit to the State representative, for written approval, a complete and detailed plan of operation for the intended activity. The Licensee shall provide for the examination of the License area, with the State representative, before any construction, reconstruction, or development is commenced.
19. Compliance with the Habitat Conservation Plan (HCP). The License Area is located within an area that is subject to State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 (ITP) as supplemented by Permit No. 1168 (Collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Licensee and all persons acting under Licensee shall comply with the terms and conditions set forth in Exhibit B while operating on License Area.

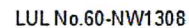
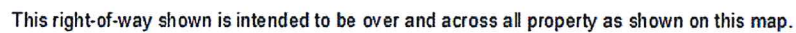
State shall have the right to modify these terms and conditions from time to time to comply with the Habitat Conservation Plan, the ITP, the Endangered Species Act, the implementing regulations, and amendments thereto, or the requirements of the federal agencies administering these laws.

Additional terms and conditions (attach additional sheet if needed): None known.

EXHIBIT A
AUTHORIZED ACCESS ROUTES FOR LICENSEE

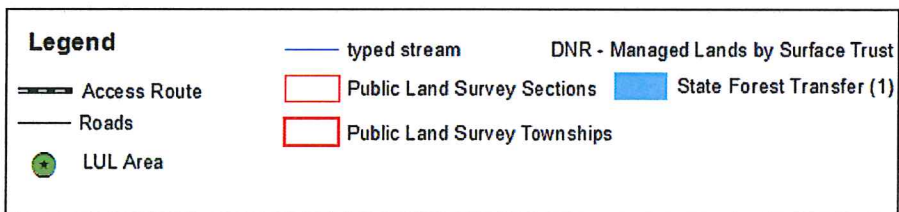
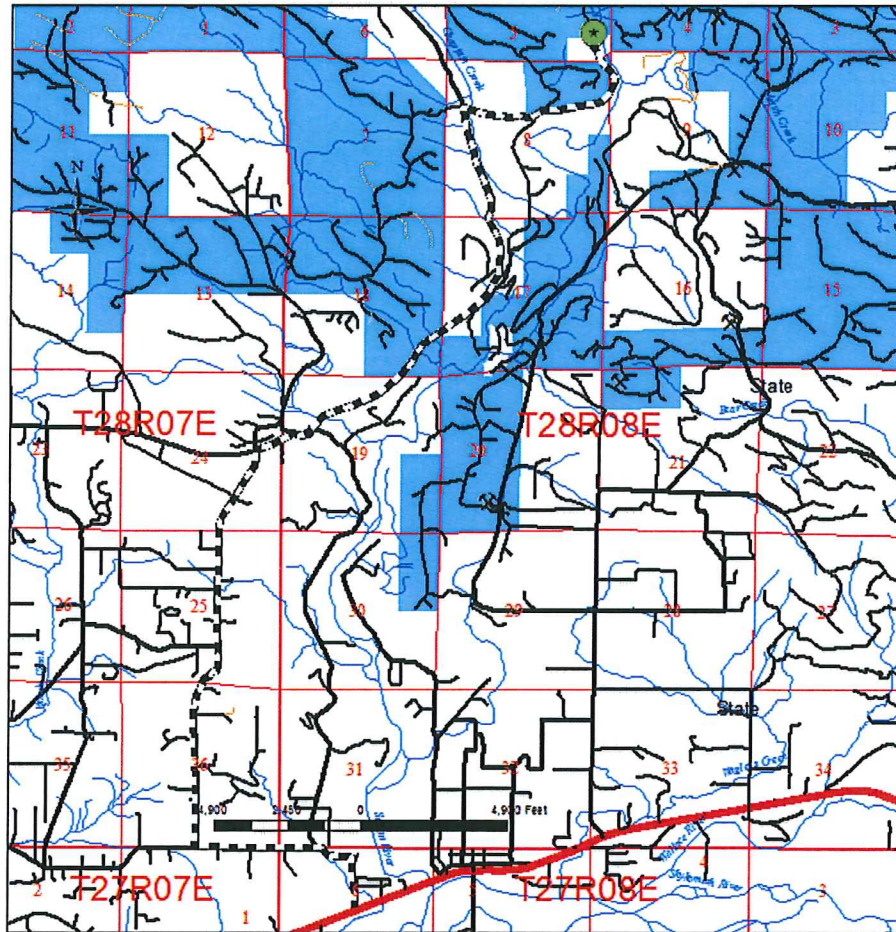
See Attached Map Exhibit A.1 and Access Route Map.

Section 5, Township 28 North, Range 8 East, W.M., Skagit County, WA



Date Drawn: 12/4/13

Access Route Map



City of Everett House Demolition

LUL No.60-NW1308

Drawn By: SF

Date Drawn: 12/4/13

EXHIBIT B
HCP REQUIREMENTS

1. The Licensee shall immediately notify the State of new locations of permit species covered in the Incidental Take Permit (ITP) that are discovered within the License Area covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; and Oregon silverspot butterflies. In all circumstances notification must occur within a 24 hour time period.
2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within the License Area the Licensee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Licensee may be required to take certain actions to help the State safeguard the well-being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State.
3. Any Forest Practices Permit application submitted for activities on the License Area must comply with the ITP and HCP and identify that the License Area is within an area covered by a Habitat Conservation Plan and part of the Incidental Take Permit No. PRT-812521 as supplemented by Permit No. 1168.


Authorize Mayor to sign Land
Use License No. 60-NW1308
with the Washington State
Department of Natural
Resources

Briefing
Proposed Action
Consent
Action
First Reading
Second Reading
Third Reading
Public Hearing
Budget Advisory

COUNCIL BILL #
Originating Department
Contact Person
Phone Number
FOR AGENDA OF

Public Works
John McClellan
425-257-8927
Aug 27, 2014

Initialed by:
Department Head
CAA
Council President



<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Lake Chaplain Tract	Property Purchase	Land Use License	Legal, Real Property

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

Last year the City purchased the property, including a cabin, of the private in-holder on the Diversion Dam Road in the Lake Chaplain Tract. This purchase closed a substantial security vulnerability for the Water Filtration Plant.

During consideration of the purchase, the City became aware that there was an unresolved survey dispute on the boundaries of the property adjacent to Washington State Department of Natural Resources (DNR) lands. The City purchased the property after discussion with DNR that it would be part of a future land exchange; the land exchange will resolve the boundary issue.

Due to the liability of the abandoned cabin, the City wishes to proceed with demolition of the cabin. In consideration of the unresolved boundary issue and our positive relationship with DNR, Public Works wishes to sign the Land Use License with DNR to provide them their standard protections in order to complete the demolition.

RECOMMENDATION (Exact action requested of Council):

Authorize Mayor to sign Land Use License No. 60-NW1308 with the Washington State Department of Natural Resources.

Council approved
8/27/14 dm